

SEMINOLE COUNTY GOVERNMENT AGENDA MEMORANDUM

SUBJECT: Authorize Release of the Right-of-Way Utilization Permit Maintenance Bond for SR 434 - Panera Bread a/k/a Mobil Manor

DEPARTMENT: Planning and Development **DIVISION:** Development Review

AUTHORIZED BY: Dori DeBord

CONTACT: Lee Shaffer

EXT: 7346

MOTION/RECOMMENDATION:

Authorize the release of the SR 434 - Panera Bread a/k/a Mobil Manor Right-of-Way Utilization Permit Maintenance Bond #LPM7590209 in the amount of \$6,938.63 for the SR 434-Panera Bread aka Mobil Manor road improvements.

District 3 Dick Van Der Weide

Lee Shaffer

BACKGROUND:

Section 35.44 (e) of the Seminole County Land Development Code, concerning Additional Required Legal Submittals, required the SR 434-Panera Bread a/k/a Mobil Manor project to have a Right-of-Way Utilization Permit Maintenance Bond, specifically, Maintenance Bond #LPM7590208 for \$6,938.63 (Fidelity and Deposit Company of Maryland), to insure against any significant degradation in operating conditions resulting from any defective work covered by this bond. Staff conducted a two year maintenance inspection for this project located SR 434 and Vagabond Way and determined the improvements to be satisfactory.

STAFF RECOMMENDATION:

Staff recommends that the Board authorize the release of the SR 434-Panera Bread a/k/a Mobil Manor Right-of-Way Utilization Permit Maintenance Bond #LPM7590208 in the amount of \$6,938.63 for the SR 434 - Panera Bread aka Mobil Manor road improvements.

ATTACHMENTS:

1. Right-of-Way Utilization Permit Maintenance Bond
2. Power of Attorney

Additionally Reviewed By:

■ County Attorney Review (Kathleen Furey-Tran)

Bond #LPM7590208

APPROVED FORMS, ETC.

RIGHT-OF-WAY USE PERMITTING

RIGHT-OF-WAY UTILIZATION PERMIT
MAINTENANCE BOND
(Streets, Curbs, Storm Drains)

KNOW ALL MEN BY THESE PRESENTS:

That we Covelli Family Ltd., whose address is 3900 E Market St., Warren, OH 44484, hereinafter referred to as "PRINCIPAL" and Fidelity & Deposit Co. of Md. hereinafter referred to as "SURETY" are held and firmly bound unto Seminole County, a political subdivision of the State of Florida, whose address is Seminole County Services Building, 1101 East First Street, Sanford, Florida 32771, hereinafter referred to as the COUNTY in the sum of \$ 6,938.63 for the payment of which we bind ourselves, heirs, executors, successors and assigns, jointly and severally, firmly by these presents:

WHEREAS, PRINCIPAL has constructed certain improvements, including streets, curbs, storm drains and other appurtenances in that certain public right-of-way known as Mobile Manor, recorded in Plat Book 70, Page(s) 42-43, Public Records of Seminole County, Florida; and

WHEREAS, the aforesaid improvements were made pursuant to certain plans and specifications dated March 14, 2005, and filed with the County Engineer of Seminole County; and

WHEREAS, PRINCIPAL is obligated to protect the COUNTY against any defects resulting from faulty materials or workmanship of said improvements for a period of two (2) years from JULY 20, 2007;

NOW, THEREFORE, the condition of this obligation is such that if PRINCIPAL shall promptly and faithfully protect the COUNTY against any defects resulting from faulty materials or workmanship of the aforesaid improvements for a period of (2) years from JULY 20, 2007, then this obligation shall be null and void, otherwise it shall remain in full force and effect.

The County Engineer shall notify the PRINCIPAL in writing of any defect for which the PRINCIPAL is responsible and shall specify in said notice a reasonable period of time within which PRINCIPAL shall have to correct said defect.

The SURETY unconditionally covenants and agrees that if the PRINCIPAL fails to perform, within the time specified, the SURETY, upon 30 days written notice from COUNTY, or its authorized agent or officer, of the default will forthwith correct such defect or defects and pay the cost thereof, including, but not limited to engineering, legal and contingent cost. Should the SURETY fail or refuse to correct said defects, the COUNTY, in view of the public interest, health, safety, welfare and factors involved, and the consideration in approving the said permit shall have the right to resort to any and all legal remedies against the PRINCIPAL and SURETY and either, both at law and in equity, including specifically, specific performance to which the PRINCIPAL and SURETY unconditionally agree.

LAND DEVELOPMENT CODE

The PRINCIPAL and SURETY further jointly and severally agree that the COUNTY at its option, shall have the right to correct said defects resulting from faulty materials or workmanship, or, pursuant to public advertisement and receipt of bids, caused to be corrected any defects or said defects in case the PRINCIPAL shall fail or refuse to do so, and in the event the COUNTY should exercise and give effect to such right, the PRINCIPAL and the SURETY shall be jointly and severally hereunder to reimburse the COUNTY the total cost thereof, including, but not limited to, engineering, legal and contingent cost, together with any damages either direct or consequent which may be sustained on account of the failure of the PRINCIPAL to correct said defects.

IN WITNESS WHEREOF, the PRINCIPAL and the SURETY have executed these presents this 26th day of March, 2007.

Address:
3900 E Market Street
Warren, OH 4484

Covelli Family Ltd. (SEAL)
PRINCIPAL

By: [Signature] Its: Vice Pres
(If a Corporation)
A.M. Covelli, Inc., General Pdr

ATTEST: _____ Its: _____
(If a Corporation)

Address:
3910 Keswick Road
Baltimore, MD 21211

Fidelity & Deposit Co of MD (SEAL)
SURETY

By: [Signature] Its: _____
Its Attorney-in-Fact - Gary Surkey

ATTEST: Ann Mims

(App E, LDC, through Supp 16).

Bond Number: LPM7590208

Power of Attorney
FIDELITY AND DEPOSIT COMPANY OF MARYLAND
HOME OFFICE: 3910 KESWICK ROAD, BALTIMORE, MD 21211

KNOW ALL MEN BY THESE PRESENTS: That the FIDELITY AND DEPOSIT COMPANY OF MARYLAND, a corporation of the State of Maryland, by Frank E. Martin, Jr., Vice President and Gerald F. Haley, Assistant Secretary, in pursuance of authority granted by Article VI, Section 2, of the By-Laws of said Company, which are set forth on the next page hereof and are hereby certified to be in full force and effect on the date hereof, does hereby nominate, constitute and appoint Gary Burkey, its true and lawful agent and Attorney-in-Fact, to make, execute, seal and deliver, for, and on its behalf as surety, and as its act and deed: Bond or undertaking number LPM7590208, issued on behalf of Covelli Family Ltd., as Principal in a penalty not to exceed the sum of Eight Thousand Three Hundred Twenty Six and Eighty Cents, (\$ 8,327) and the execution of such bond or undertaking in pursuance of these presents, shall be as binding upon said company, as fully and amply, to all intents and purposes, as if it had been duly executed and acknowledged by the regularly elected officers of the Company at its office in Baltimore, MD, in their own proper persons.

The said Assistant Secretary does hereby certify that the extract set forth on the next page hereof is a true copy of Article VI, Section 2, of the By-Laws of said Company, and is now in force.

IN WITNESS WHEREOF, the said Vice-President and Assistant Secretary have hereunto subscribed their names and affixed the Corporate Seal of the said FIDELITY AND DEPOSIT COMPANY OF MARYLAND this 26th day of March, A.D. 2007.

ATTEST:

FIDELITY AND DEPOSIT COMPANY OF MARYLAND



Gerald F. Haley
Gerald F. Haley Assistant Secretary

By: *Frank E. Martin Jr.*
Frank E. Martin, Jr. Vice President

State of Maryland } ss:
County of Baltimore

On this 26th day of March, A.D. 2007, before the subscriber, a Notary Public of the State of Maryland, duly commissioned and qualified, came Frank E. Martin, Jr., Vice President, and Gerald F. Haley, Assistant Secretary of the FIDELITY AND DEPOSIT COMPANY OF MARYLAND, to me personally known to be the individuals and officers described in and who executed the preceding instrument, and they each acknowledged the execution of the same, and being by me duly sworn, severally and each for himself depose and saith, that they are the said officers of the Company aforesaid, and that the seal affixed to the preceding instrument is the Corporate Seal of said Company, and that the said Corporate Seal and their signatures as such officers were duly affixed and subscribed to the said instrument by the authority and direction of the said Corporation.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my Official Seal the day and year first above written.



Stephen G. Moxley
Stephen G. Moxley Notary Public
My Commission Expires: November 1, 2007

EXTRACT FROM BY-LAWS OF FIDELITY AND DEPOSIT COMPANY OF MARYLAND

"Article VI, Section 2. The Chairman of the Board, or the President, or any Executive Vice-President, or any of the Senior Vice-Presidents or Vice-Presidents specially authorized so to do by the Board of Directors or by the Executive Committee, shall have power, by and with the concurrence of the Secretary or any one of the Assistant Secretaries, to appoint Resident Vice-Presidents, Assistant Vice-Presidents and Attorneys-in-Fact as the business of the Company may require, or to authorize any person or persons to execute on behalf of the Company any bonds, undertaking, recognizances, stipulations, policies, contracts, agreements, deeds, and releases and assignments of judgements, decrees, mortgages and instruments in the nature of mortgages,...and to affix the seal of the Company thereto."


CERTIFICATE

I, the undersigned, Assistant Secretary of the FIDELITY AND DEPOSIT COMPANY OF MARYLAND, do hereby certify that the original Power of Attorney of which the foregoing is a full, true and correct copy, is in full force and effect on the date of this certificate; and I do further certify that the Vice-President who executed the said Power of Attorney was one of the additional Vice-Presidents specially authorized by the Board of Directors to appoint any Attorney-in-Fact as provided in Article VI, Section 2, of the By-Laws of the FIDELITY AND DEPOSIT COMPANY OF MARYLAND.

This Power of Attorney and Certificate may be signed by facsimile under and by authority of the following resolution of the Board of Directors of the FIDELITY AND DEPOSIT COMPANY OF MARYLAND at a meeting duly called and held on the 5th day of May, 1994.

RESOLVED: "That the facsimile or mechanically reproduced seal of the company and facsimile or mechanically reproduced signature of any Vice-President, Secretary, or Assistant Secretary of the Company, whether made heretofore or hereafter, wherever appearing upon a certified copy of any power of attorney issued by the Company, shall be valid and binding upon the Company with the same force and effect as though manually affixed."

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and affixed the corporate seal of the said Company, this 26th day of March, 2007.



L.L. Goucher

Assistant Secretary

